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REPORT No. 130/19
PETITION 95-09
REPORT ON ADMISSIBILITY

EDWIN HERNÁN CIRO AND FAMILY
COLOMBIA

Approved electronically by the Commission on August 13, 2019.

Cite as: IACHR, Report No. 130/19, Petition 95-09. Admissibility. Edwin Hernán Ciro and family. Colombia. August 13, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Roberto Fernando Paz Salas
Alleged victim	Edwin Hernán Ciro
Respondent State	Colombia ¹
Rights invoked	Articles 4, 8 and article 25 of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	January 28, 2009
Additional information received during initial review	May 28, 2009 and April 1, 2011
Notification of the petition	December 12, 2014
State's first response	April 24, 2015
Additional observations from the petitioner	June 23, 2015 and June 14, 2016

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument of ratification on July 31, 1973) and Inter-American Convention to Prevent and Punish Torture ⁴ (deposit of the instrument of ratification on January 19, 1999)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	Articles 4, 5, 7, 8, 24 and 25 of the American Convention on Human Rights in relation to article 1.1 and 2
Exhaustion of domestic remedies or applicability of an exception to the rule	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner indicates that on August 27, 1999 in the Municipality of San Rafael, department of Antioquia, at dawn, while Mr. Edwin Hernán Ciro (hereinafter "the alleged victim") and his family were sleeping, a group of armed persons broke down the door of their home and entered violently, without any type of judicial order or search warrant. He says that the men were agents of the Unified Action Group for Personal Liberty (hereinafter "GAULA"), belonging to the National Police, as they were wearing uniforms and had police insignia. He states that they proceeded to identify and tie up the alleged victim, and despite requesting to be allowed to put on his shoes, they shouted that where he was going he would not need them and subsequently they took him away in a van. The relatives of the alleged victim indicate that after a few minutes they heard shots very close to his house. Additionally, he indicates that they searched the whole house, searched their belongings, destroyed some and took away valuables and an amount of money they kept.

2. He maintains that that afternoon, the neighbors saw the trucks that would have been used for the operation in front of the Police Station, and they also reported that the police had killed two people

¹ In accordance with the provisions of Article 17(2)(a).a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate either in the discussions nor the decision in the present matter.

² Hereinafter the "Convention" or the "American Convention"

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter "ICPPT"

and that their bodies were on the road to the Municipality of Guatapé. The neighbors claim that one of the bodies belonged to the alleged victim and presented multiple gunshots in the back, as evidenced by the corpse removal certificate and the autopsy.

3. He expressed that an investigation was initiated in the military criminal jurisdiction, and that after a declaration of lack of competence, the case was referred to the 93rd Delegate Prosecutor's Office in the ordinary jurisdiction, without any results known to date.

4. Additionally, he refers that the family of the alleged victim filed a direct reparation action before the Administrative Tribunal of Antioquia. They allege that it was rejected on April 24, 2008, on the grounds that the link to the acts being carried out by the National Police had not been proven. It states that they filed an appeal, which on July 14, 2008 was declared inadmissible by the Fifth Chamber of Decision of the Administrative Tribunal of Antioquia because of the amount of the claims.

5. In turn, the State indicates that in the framework of the investigations initiated by Section 93 of the Prosecutor's Office, it considered that the elements of conviction gathered, pointed to the possible configuration of an offense related to the exercise of police activity, for which reason, on September 9, 1999, it decided to transfer the jurisdiction of the matter to the military criminal jurisdiction. It states that in that instance it was found that the GAULA group of Río Negro, with the support of its Medellín counterpart, conducted an operation on August 27, 1999 in the Municipality of San Rafael, complying with a judicial order with the objective of conducting the search for a child who had been kidnapped. It indicates that on March 18, 2003, the court hearing the case decided to refer it to the ordinary jurisdiction, since it concluded that although the facts indicated that the agents of the GAULA were presumed responsible, their actions were not actions committed while on duty and that they had criminal characteristics non related to the police mission.

6. It mentions that the matter was assigned to the Section of Prosecutor's Office 97 of Marinilla, which on June 8, 2004 resolved the preclusion of the investigation in favor of the four accused, arguing that although there were serious evidence against them, it was not sufficient enough to single out the responsibility for the murders under investigation. It affirms that said resolution indicated that in their statements the defendants indicated that they were not at the place where the alleged acts occurred at 3 o'clock in the morning, as the witnesses said, but at 5 am, and the defendants stressed that "when they noticed the presence of a group of uniformed personnel different to the one normally assigned to that jurisdiction, the witnesses reached the conclusion that they had been the authors of the homicides, statements that are not supported by evidence, in addition in the area where the events occurred there is a marked presence and influence of subversive groups, which could have easily demand the relatives of the offended to point out the Gaula staff as the perpetrators of the attacks".

7. Furthermore, it affirms that the alleged facts do not characterize violations of human rights, since the content of the petition is based on the petitioner's dissatisfaction with the decisions adopted in the national jurisdiction, trying to turn the international protection system into a scenario of procedural instance that makes possible the reconsideration of the factual and legal analysis.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioner states that the death of the alleged victim remains unpunished, because up to date the investigations have not been able to determine those responsible. It also states that the relatives of Mr. Edwin Ciro could not make use of an effective remedy, since they were denied the appeal to the State Council to obtain compensation for the events. For its part, the State did not make any argument regarding the exhaustion of domestic remedies, nor did it dispute what the petitioner indicated in this regard.

9. The Commission has established that in situations related to possible violations of the right to life and personal integrity, the domestic remedies that must be taken into account for the purposes of admissibility of the petition are those related to the investigation and punishment of those responsible, which are translated into domestic legislation and are designed as crimes that can be prosecuted ex officio. In the instant case, the Commission notes that 20 years after the death of the alleged victim, the investigations were initially conducted in the military jurisdiction and then, in the ordinary proceeding, the criminal proceeding did not conclude with a substantive decision that included a sanction for those responsible. Based on the foregoing, the IACHR concludes that in the present case, the exception to the exhaustion of domestic remedies contemplated in Article 46.2.c of the American Convention applies.

10. In addition, in regards to the direct reparation proceedings before the contentious-administrative jurisdiction, the Commission has repeatedly held that said remedy does not constitute an appropriate remedy for analyzing the admissibility of a claim of the nature of the present case, as it is not adequate to provide a comprehensive reparation that includes clarification and justice for family members. Notwithstanding, although in the instant case the criminal proceeding is the appropriate remedy for the investigation of the facts, it is noted that the petitioners also allege specific violations in the context of the claim for direct reparation. Therefore, given the connection between the two processes, bears in mind that in the administrative contentious jurisdiction, the appeal filed by the petitioner was dismissed on July 14, 2008, by the Fifth Chamber of Decision of the Administrative Tribunal of Antioquia, arguing that due to the minimum amount "the claim never had a dual instance vocation". The IACHR considers that this situation falls within the presumption of exception to the exhaustion of domestic remedies provided for in Article 46.2.a of the American Convention.

11. Therefore, considering the characteristics of the case, the IACHR considers that the petition was presented within a reasonable timeframe and that the requirement of admissibility in relation to the time of presentation is met.

VII. COLORABLE CLAIM

12. Based on the factual and legal arguments presented by the parties and the nature of the subject matter, the Commission considers that, if proven, the alleged illegal detention and murder of Mr. Edwin Hernán Ciro, allegedly committed by police agents, as well as the lack of effective judicial protection and the alleged impossibility to appeal a decision as a result of its size could establish a possible violation of articles 4 (right to life), article 5 (personal integrity), article 7 (right to personal freedom), article 8 (judicial guarantees), article 24 (equality before the law) and article 25 (judicial protection) of the American Convention on Human Rights in relation to article 1.1 (obligation to respect) and 2 (obligation to adopt domestic legislation).

13. Finally, with regard to the argument of the State on the fourth instance, the Commission observes that admitting this petition does not intend to replace the jurisdiction of the domestic judicial authorities. However, it will analyze at the merits stage of the present petition, whether the domestic judicial processes complied with the guarantees of due process and judicial protection and offered due guarantees of access to justice for the alleged victims under the terms of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 24, 25 of the American Convention, in accordance with articles 1.1 and 2;
2. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 13th day of the month of August, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.